

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CASE NO. 8:09CR296
)
Plaintiff,)
)
vs.) MEMORANDUM
)
GARY KEMP,)
)
Defendant.)

This matter is before the Court on the government's motion to dismiss Count II without prejudice (Filing No. 36).

The motion, based on Federal Rule of Criminal Procedure 48(a), was filed after judgment was entered and after the Court granted the government's motion for preliminary forfeiture. Authority exists stating that a Rule 48(a) motion may be filed even after sentencing. 3B Charles Alan Wright, et al., Federal Practice and Procedure § 812, at 331 (3d ed. 2004). The Court's discretion in reviewing the motion is "limited to assessing whether the government's motion is contrary to manifest public interest because it is not based in the prosecutor's good faith discharge of her duties." *United States v. Jacobo-Zavala*, 241 F.3d 1009, 1013 (8th Cir. 2001).

The motion is not contrary to the public interest. Accordingly, leave is granted for the dismissal of Count II of the Indictment without prejudice.

IT IS ORDERED:

1. The government's motion to dismiss Count II without prejudice as against the above-named Defendant (Filing No. 36) is granted; and
2. An amended Judgment will be issued.

DATED this 12th day of January, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge